VIRGINIA LAW REGISTER

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Reminiscences IV.

Of course everything the writer may say of Judge Lucas P. Thompson can hardly be called a reminiscence; for the Judge was no longer on the Albemarle circuit when the writer came into existence. There were, however, some six or seven members of the bar still in full practice when the writer came to the bar and he heard much of Judge Thompson from the elder brethren. Personally he was not popular. He was a splendid judge; learned in the law, impartial yet firm. Of great dignity, he mingled very little with the members of his bar. He was austere and stern and therefore was not of a character to invite friendship, or even association. At the convivial gatherings of the lawyers he was always missing, and gave little opportunity for the practitioners in his court to know him personally. He was respected—even admired—but never loved.

Many stories are told of his strictness on the bench. Two are worth telling. In one of his counties a new sheriff had been elected under the Code of 1849. He felt the importance of his office very much, and being very genial, kind-hearted and full of fun, he did not realize that any one could take offense at any of his well-meaning actions. On one occasion Judge Thompson adjourned court for a recess from one to two o'clock. When two o'clock came the sheriff went into the courthouse and rang the bell very vigorously for several minutes. It was well after the half hour when the Judge took his seat on the bench and ordered the sheriff to open court. This being done in due form he turned to the sheriff and asked, "Who rang that bell?" "If your Honor please, I did," replied the sheriff. "Your Honor adjourned court until two o'clock and I thought you meant it." "I will have you to understand, sir," the Judge sternly replied, "two o'clock came when my watch said so, and to impress this fact on your mind

the clerk will enter up a fine of ten dollars against you." And the fine was paid.

The other story we believe has been in print, but as we heard it from a lawyer who witnessed it we will venture to repeat it.

On the first day of the term an individual staggered into the court room, very drunk, and was disposed to be disorderly. "Bring that man before the court," the judge said very sternly, and the unfortunate inebriate confronted a very angry judge. After giving him a brief lecture—which he was too drunk to appreciate—the Judge ordered the sheriff to take the man to jail and keep him there until he ordered his discharge. The kindly sheriff took the man out of the court and giving him a friendly kick, told him to hasten home and remain there until the Judge had left, "Lest a worse thing befall him", and off home the man hurried. The sheriff thought no more of the matter and supposed the Judge had forgotten it, as the court sat two weeks and the Judge made no allusion to the supposed prisoner. One can imagine his horror when on the last day of the term, just after the orders had been read, the Judge turned to the sheriff and said, "Mr. Sheriff, on the first day of the term I ordered you to imprison a drunken man who was disturbing the court. I suppose his imprisonment has sufficiently sobered him and taught him a lesson. Bring him into court and I will reprimand and discharge him."

The sheriff's blood ran cold! Visions of an enormous fine—of possible imprisonment—of the severe and lasting displeasure of the court, came hurrying before him. He murmured acquiescence and walked slowly out of the courtroom, wondering if flight was his only possible means of escape. As he reached the door he saw a drunken man staggering along the walk leading to the gate of the courthouse yard. It was only the work of a moment when he dashed up to the unfortunate fellow, grabbed him by the collar and whispered angrily in his ear: "Come along with me, you drunken fool, and don't you dare to open your mouth! Old Judge Thompson has seen you and you are in for a lecture; but you keep quiet. If you dare to say a word he may hang you. Come along!" And despite the man's resistance, which was feeble, anyway, the sheriff dragged him into court,

whispering fiercely all the time into his ear, "Now, keep quiet! Don't you dare to say one word! You'll be hung if you do!" Holding his prisoner by the collar the sheriff said, "Here he is, your Honor." Thereupon the Judge very solemnly proceeded to lecture the man on the evils of intoxication and the peculiar heinousness of the offense of his coming into the courtroom and disturbing the court. Every now and then the "lecturee" would attempt to put in a word, "But, Jedge—" Before he could finish the sentence the sheriff's grip would tighten on his collar and he would whisper in a blood-curdling voice, "Keep still, you fool! keep still!—Old Thompson will hang you, if you say a word!" At last the lecture, which to the sheriff seemed interminable, did end. "Now, go to your family, sir," was the conclusion, "and may this imprisonment make a better man of you." "But, Jedge—" the prisoner attempted to say. The sheriff would not allow him to finish, but dragged the unfortunate man out of the courthouse, through the yard and into the public road, and with no gentle kick this time, bade him to get out of town with all possible speed—which he did. On his return to the courtroom the Judge, still on the bench, remarked to the still agitated officer, "Mr. Sheriff, there is either a tremendous potentiousness in the whisky in this town or the jail is badly managed. I believe that man is still intoxicated. Look into the matter, sir, before the next term." Did you look?" some one asked the sheriff. "Look?" said he, "Why I was scared stiff until the next term was over." The matter was never alluded to again.

The Judge took a queer fancy to one of the characters who used to attend court as regularly as the Judge. Old man Jesse Glass, who was a great fighter and who attended court for the purpose of proving his championship and to enjoy the luxury of hearing cases tried, and occasionally in his own county, of serving on a jury. The class of men to which Jesse belonged exists no longer. The free school, the newspaper, the rapid means of transportation, have eliminated the "character" from the face of the earth. Unlettered, but very shrewd; living by their wits; full of wit and humor—they were the unlicensed jokers of the community, and tolerated if not really liked.

Jesse was a great fighter. Being arrested once in Fluvanna

for a fight on the court green, he burst into tears. "Gimme my coat! Gimme my hat!" he cried. "Lemme alone and I'll go over into Louisy County, whar a man can fight in peace and quietness!" And he shook the dust of Fluvanna from his feet.

But in "Louisy" he fought with so much noise that he was haled into court for disturbing the peace. Judge Thompson lowered at him. "What does this mean, Mr. Glass? How dare you disturb this court with your unseemly brawls and noise?" Jesse looked at the court with unflinching eye. "I beg your Honor's pardon most humbly. I didn't know I was making a fuss. But that darned skunk Bill Nivens trespassed on my "clothes" and I jest filed my injunction with these," holding up two enormous fists. The Judge's stern countenance relaxed into something of a smile. "Hereafter, Mr. Glass," he said, "Get your injunctions from me, and get out of the courthouse," and Jesse got.

He was a great Whig and when that party went out into the shadows of defeat, Jesse was very mournful. There were bosses in those days, even as now, and the M——s were the bosses of the Whig party in Albemarle and Fluvanna at that time. Somebody met old Jesse walking along the road with a very long stick in his hand, soon after the inglorious defeat of the Whigs. "How's politics, Mr. Glass?" "Politics!" the old man growled, beating his long stick on the ground. "Politics! Why they've gone to hell. Just think of it, sah! The Knownothings and the d—nd M——s have *cataracted* the old Whig party."

Judge Thompson held his last term in Albemarle in May 1852. His last order was a vacation one, signed 30th of June, 1852, and was a certificate that William J. Robertson had qualified before him as Attorney for the Commonwealth for Albemarle County. This was that eminent lawyer and grand gentleman who was afterwards on the Supreme Court of Appeals and who deservedly stood at the head of the Virginia Bar. The writer was honored with his friendship and was associated with him in many cases in the Albemarle Circuit. He never knew a more profound lawyer or more cultivated, genial, high-minded gentleman.

We may say *en passant* that the office of Commonwealth's Attorney for Albemarle County has been held by only five men

since 1852, and one of them—John B. Moon—only held it two months; Wm. J. Robertson, R. T. W. Duke, M. Woods, John B. Moon, and the writer. A carpetbagger named Worthington pretended to fill the office under the military regime, but he was so ignorant of the commonest rudiments of the law that he had to get Col. Duke to draw every paper required, but this "gentleman from the North" did not fail to draw the salary and fees, and no "rebel" was allowed to participate therein. He left the county and went into oblivion, when the State got from under the heel of reconstruction.

Judge Thompson was succeeded by Judge Richard H. Field, of Culpeper, who held his first court in September, 1852. The grand jury at that term brought in only one indictment—against "Randal Jones, a free man of colour, for remaining in the State contrary to law."

Depositions Where Infants or Insane Persons Are Concerned. Section 5339, of the Code of 1919.

One of the Revisors of the Code has kindly called our attention to the importance of Section 5339 of the Code of 1919, which provides that: "No deposition shall be read in any suit against an infant or insane party, whether brought under this chapter or not, unless it be taken in the presence of the guardian *ad litem* or upon interrogatories agreed to by him." This was formerly the law in certain cases. It is now made general and is applicable in all suits against an infant or insane person. Judge Burks, in his very able address before the Bar Association on the Code Revision, did not allude to this section and we are strongly inclined to think that it has escaped the attention of a great many lawyers. We therefore think it well that the profession should take careful note of this section, or else a great deal of trouble may arise from neglecting it.

The two prominent social clubs of Richmond, the Westmoreland and the Commonwealth Clubs, some months ago determined

A Curious Condition of Affairs in the Judiciary.

to consolidate. These two clubs are nonstock corporations, organized for social purposes. At a meeting of the two bodies a majority of each determined to consolidate, but a minority of each body opposed to this consolidation, appealed to the Corporation Commission of the State of Virginia, resisting the proposed consolidation on the ground that nonstock corporations such as these two clubs could not consolidate. The Corporation Commission, however, decided against the contention of the minority, and held that a majority of the two clubs had a right to consolidate.

The question then came up as to an appeal from the action of the State Corporation Commission, allowing the consolidation, and the parties desiring to appeal were met by a very curious fact: An appeal lies from the State Corporation Commission to the Virginia Supreme Court of Appeals; and it happens that every member of the Virginia Supreme Court of Appeals is a member of the Westmoreland Club. It was also curious that when the matter was first brought up in the lower courts every judge in the City of Richmond except Judge Wells of the Hustings Court, Part Number Two, was a member of the Westmoreland Club. Of course if the appeal ever reaches the Supreme Court the matter will present no difficulty, because under the statute, the Supreme Court would have a right to have summoned from the judges of the circuit court or city courts of the first class as many as, with the judges of the Supreme Court of Appeals not so situated, will make the number five. Of course this would require the five special judges who could hear and determine the case. We doubt if ever before in the history of the State has there been a similar case.

The First Law School in the United States.

There has been a good deal of contention in the press of the country within the last few months in regard to where the first school of law in the United States was situated. A careful examination of all the evidence in the case must satisfy any dis-

interested person that the venerable old College of William and Mary has clearly established its right to this distinction; for in 1779, during the Revolutionary War a school of law was established at William and Mary, of which George Wythe was the first professor and who numbered among his pupils John Marshall and Bushrod Washington. Those opposing the claim of William and Mary insist that law was taught in the College as one of the several branches of a liberal education, not as a profession—which is just about as sensible as to claim that a school of Latin had been established and taught, and that persons becoming teachers of Latin, therefore, could not claim that what they were taught there, constituted a school of Latin.

Our ever-vigilant Robert M. Hughes has written a very able reply to this contention, which we quote *in extenso,* in order that it may find a permanent record in the REGISTER and not simply remain as a contribution to the ephemeral press.

"The fact that law work is counted as part of an academic course does not take away its character as law work. Law books were few and law preparation meagre then as compared with present conditions. Notwithstanding Judge Baldwin's assertion, the course at William and Mary was studied as a preparation for the bar, and was not followed by any other except, of course, in many cases a further reading in a lawyer's office—a practice not unknown now. During the existence of the William and Mary law course twenty-five out of forty-three Judges of the Virginia Court of Appeals received their legal education there. The immediate successor to Wythe was St. George Tucker, whose edition of Blackstone was his textbook. An examination of it and of Tucker's supplementary notes shows the legal character of the course.

"In a letter of R. H. Lee to his brother Arthur, dated Aug. 31, 1780, he says:

" 'If Ludwell is not useful to you there, I think he may benefit himself by repairing to Williamsburg and finishing his law studies under Mr. Wythe, who is now most worthily employed in the character of Law Professor at William and Mary College—which professorship he discharges the duty of with wonderful ability both as to theory and practice'

"John Brown, in a letter to William Preston, dated Feb. 15, 1780, says:

" 'I apply closely to the study of the law and find it to be a more difficult science than I expected, though I hope with Mr. Wythe's assistance to make some proficiency in it; those who finish this study in a few months either have strong natural parts or else they know little about it.'

"In a later letter, dated July 6, 1780, he says:

" 'Mr. Wythe, ever attentive to the improvement of his Pupils, founded two Institutions for that purpose, the first is a Moot Court, held monthly or oftener in the place formerly occupied by the Gen. Court in the Capitol. Mr. Wythe and the other professors sit as Judges. Our Audience consists of the most respectable of the Citizens, before whom we plead causes given out by Mr. Wythe, Lawyer like I assure you. He has form'd us into a Legislative Body, consisting of about 40 members. Mr. Wythe is Speaker to the House and takes all possible pains to instruct us in the Rules of Parliament. We meet every Saturday and take under our consideration those Bills drawn up by the Committee appointed to revise the laws, then we debate and Alter (I will not say amend) with the greatest freedom. I take an active part in these Institutions and hope thereby to rub off that natural Bashfulness which at present is extremely prejudicial to me. These Exercises serve not only as the best amusement after severer studies, but are very useful and attended with many important advantages.'

"Bushrod Washington left William and Mary in 1778, more than a year before Wythe's law course started.

"Of course, his training was not a sufficient legal education, but it proves nothing as to Wythe's subsequent lectures."

Measure of Damages.

We are frank to confess that the conclusion drawn by the court in the case of *Lorillard Company, Inc.* v. *Clay,* decided in Staunton September 16th, 1920, took us considerably by surprise. This was a case in which Clay recovered a judgment against the Lorillard Company for fifteen thousand

dollars for the loss of an eye alleged to have been caused by the negligence of the Company whilst he was in its employ as a servant. The negligence was clearly established by the verdict of the jury and the loss of the eye equally proven. The point made by the counsel for the defendant in error was that the verdict ought to have been set aside on the ground of the improper remarks of counsel, and had the court set aside the verdict on this ground we would not have been surprised; but in view of the long line of decisions in which the court has repeatedly held that there is no rule of law fixing the measure of damages in cases of this kind but that it is a matter to be left to the sound discretion and judgment of an impartial jury, whose verdict will not be disturbed unless it appears that they have been influenced by partiality or prejudice, or have been misled by some mistaken view of the merits of the case,—E. I. DuPont Company *v.* Taylor, 124 Va. 750, and cases cited—we must confess some surprise at the action of the court in reducing the verdict from fifteen thousand to ten thousand dollars; especially as they say that even had the remarks of counsel been unobjectionable a verdict for the plaintiff for the proper amount would not have been set aside on the ground that it was without evidence to support it or was plainly contrary to the evidence. The court, however, determined that no error was committed in fixing the liability, and therefore proceeded under Section 6365, Code of 1919, to reduce the verdict from fifteen thousand to ten thousand dollars. As a part of its reasoning for this reduction the court refers to eighteen verdicts for the loss of an eye, which have met the approval of appellate courts of the states in which they were rendered. These verdicts range from fifteen thousand dollars to fourteen hundred dollars, and the average of the eighteen amounted to five thousand four hundred and twenty-four dollars. They then quoted a case from Texas in which the verdict in a similar case for eight thousand dollars was reduced by one thousand, and a case in Michigan where fifteen thousand dollars was reduced to ten, and a case in which a railroad fireman nineteen years of age lost his eye, had his jaw fractured and was otherwise severely injured, and the verdict was reduced from twelve thousand, eight hundred and

twenty-one dollars to seventy-five hundred—in our judgment an outrageous exercise of the power of the court. In Wisconsin a stenographer, for a similar injury, recovered twelve thousand dollars and the court reduced it to six thousand; and the case of a girl, the operator of a machine, in which a verdict for ten thousand dollars was reduced to six. But probably the most monstrous case quoted was one from Wisconsin, in which a man had both legs cut off, and a verdict for thirty thousand dollars was set aside. One case is cited from Oklahoma, in which a verdict of fifteen thousand dollars for the loss of one eye was sustained, and in the case of Libbey, etc. *v.* Banks, from Illinois, they quoted the verdict of the jury for seven thousand dollars, when the plaintiff not only lost one eye but was absolutely incapacitated to do any work—a verdict hard to conceive as in any measure just and right.

Now, is a result reached by comparing cases from a large number of states, a wise method of arriving at the injury in a particular case in this State? So many things enter into the verdicts of juries, and we regret to say, also into the decisions of courts, that we have always believed that the measure of damages ought not in any way to be affected by the verdicts reached in other tribunals. The case before the court ought to be the one to govern the court and not cases before other courts, and as far as our personal judgment goes we do not believe that the sum of fifteen thousand dollars is by any means too much for the loss of an eye; for, following the reasoning of the court, it is not only the loss of the eye which is to be compensated for, but the physical and mental suffering which the man losing the eye sustains. We do not believe there is any man in the Commonwealth of Virginia, in his sound senses, who would consider himself in any way compensated for the loss of one eye by the sum of fifteen thousand dollars, and compensation not only for the loss of the eye but for the physical suffering, following the long line of decisions of this court, ought to be taken into consideration. It seems to us a sufficient answer to this method of arriving at the conclusion would have been to examine the very authorities which the court quotes and to show how absolutely conflicting and unworthy of being taken as guides these amounts

of damages are. We think the decision should have been reached by resting it upon an equally well-settled principle of the court that the remarks of counsel caused the jury to err and that therefore the case should have been set aside for a new trial—not upon the measure of damages but upon the fact that the jury was prevented from being impartial by the arguments used by counsel.

Considerations on Criminal Law.

Not being familiar with a law book called "Considerations on Criminal Law," which is quoted in the article on the Non-Support Act of 1918, ante p. 561, we asked the writer to verify the citation. Mr. Cohen replied as follows:

"The book, 'Considerations on Criminal Law, pp. 181-183' from which I quoted, was printed in Dublin in 1772 for H. Saunders, W. Sleater, E. Lynch, D. Chamberlaine, J. Williams, T. Walker and C. Jenkin, and I have been curious to know the name of the author, which is not indicated anywhere in its some 434 pages. I acquired the volume in Charlottesville at sale of A. R. Blakey's law library some 21 years ago. Mr. Scott our Law Librarian and others here have been appealed to in vain to find the author's name. The title is simply as stated, and the diction is that of a cultivated gentleman, and the reasoning that of an erudite lawyer."

Note.

The article "Competency of Attesting Witnesses to Wills, and Effect of Interest under Wills as Disqualification" which appeared in the October number (6 V. L. R., N. S., 407) as a contributed article edited by James F. Minor was merely a revision of a brief which had been prepared on the subject by Judge Joseph T. Lawless of the Norfolk Bar, and which contained a wealth of authorities and showed exhaustless research.